BUCK STOVE AND RANGE CO. *v.* VICKERS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 10. Argued December 19, 1911.—Decided December 2, 1912.

Rev. Stat., § 1011, providing that there shall be no reversal in this court upon a writ of error for error in ruling on any plea of abatement other than one to the jurisdiction of the court, does not apply to writs of error to state courts but only to lower Federal courts.

The subdivision and rearrangement of § 22 of the Judiciary Act of 1789 in the Revised Statutes of 1873 did not work any change in the purpose and meaning of the original act.

The statute of Kansas of 1905, requiring certain classes of foreign corporations to file statements is an invalid restriction and burden and unconstitutional as to foreign corporations engaged in interstate commerce, under the commerce clause of the Federal Constitution. *International Textbook Company* v. *Pigg*, 217 U. S. 91.

80 Kansas, 29, reversed.

THE facts, which involve the application of § 1011, Rev. Stat., to writs of error to state courts and also the constitutionality of a statute of Kansas affecting the right

statute provides that each corporation for profit, doing business in the State, except banking, insurance and railroad corporations, shall annually prepare and deliver to the Secretary of State a complete and detailed statement, exhibiting: "1st. The authorized capital stock. 2nd. The paid-up capital stock. 3rd. The par value and the market value per share of said stock. 4th. A complete and detailed statement of the assets and liabilities of the corporation. 5th. A full and complete list of the stockholders, with the postoffice address of each, and the number of shares held and paid for by each. 6th. The names and postoffice addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held." This section further provides that a failure to file such statement by any corporation doing business in the State and not organized under its laws shall work a forfeiture of the right or authority to do business in the State, and that "No action shall be maintained or recovery had in any of the courts of this State by any corporation doing business in this State without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made."

The four corporations against which the plea was sustained were corporations for profit organized under the laws of States other than Kansas, were not banking, insurance or railroad corporations, were doing business in Kansas—a purely interstate business—and had not complied with the statute just described. There can be no doubt, therefore, that if the statute, especially § 1358, is valid as against such corporations, the plea was rightly sustained; otherwise, it should have been overruled. So, the question for decision is, whether, consistently with the commerce clause of the Constitution of the United States, a State may thus restrict and burden the right to do interstate business within its limits. This precise

question was presented to this court and decided in the negative in the case of *International Textbook Co.* v. *Pigg*, 217 U. S. 91, a case in which the Supreme Court of Kansas had applied the provisions of § 1358 (§ 1283, Gen. Stat. 1901) to a corporation of another State doing an interstate business in Kansas. And the decision of this court in that case was shortly thereafter followed in the similar case of *International Textbook Co.* v. *Lynch*, 218 U. S. 664, brought here on error to the Supreme Court of Vermont. It is due to the Supreme Court of Kansas to observe that this court's decision in the *Pigg Case* had not been made when that court's decision in the present case was given; but in saying this we would not be understood as implying that this court announced any new doctrine in the *Pigg Case*, for it but reiterated and applied principles which were already well recognized, as was shown in the earlier cases of *Paul* v. *Virginia*, 8 Wall. 168, 182; *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727, 734, and *Crutcher* v. *Kentucky*, 141 U. S. 47, 56.

As accurately reflecting what was held in the *Pigg Case*, we excerpt the following from the opinion of the court, delivered by Mr. Justice Harlan (pp. 109, 112):

"'To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.'

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"How far a corporation of one State is entitled to claim in another State, where it is doing business, equality of treatment with individual citizens in respect of the right

to sue and defend in the courts is a question which the exigencies of this case do not require to be definitely decided. It is sufficient to say that the requirement of the Statement mentioned in § 1283 [§ 1358, Gen. Stat. 1905] of the statute imposes a direct burden on the plaintiff's right to engage in interstate business, and, therefore, is in violation of its constitutional rights. It is the established doctrine of this court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business. But such a burden is imposed when the corporation of another State, lawfully engaged in interstate commerce, is required, as a condition of its right to prosecute its business in Kansas, to make and file a Statement setting forth certain facts which the State, confessedly, could not control by legislation. It results that the provision as to the Statement mentioned in § 1283 [§ 1358, Gen. Stat. 1905] must fall before the Constitution of the United States, and with it—according to the established rules of statutory construction—must fall that part of *the same section* which provides that the obtaining of the certificate of the Secretary of State that such Statement has been properly made shall be a condition precedent to the right of the plaintiff to maintain an action in the courts of Kansas."

Following the decision in that case, we hold that the statute upon which the plea in abatement was rested is unconstitutional and void, and that the plea should not have been sustained but overruled.

The judgment is reversed as to the remaining plaintiffs in error, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE PITNEY did not hear the argument or participate in the decision of this case.